

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

1712 SOUTH PRAIRIE LLC, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 07 C 6703
)	Judge David H. Coar
HONORABLE ROBERT FIORETTI,)	Magistrate Judge Nan Nolan
)	
Defendant.)	

**DEFENDANT’S MOTION FOR AN EXTENSION OF TIME
TO ANSWER OR OTHERWISE PLEAD TO PLAINTIFFS’ COMPLAINT**

Defendant Alderman Robert Fioretti, by his attorney, Mara S. Georges, Corporation Counsel for the City of Chicago (“Alderman Fioretti”), hereby moves this Court for an extension of time, to and including January 4, 2008, to answer or otherwise plead to Plaintiffs’ Verified Complaint for Mandamus and for Injunctive, Declaratory and Monetary Relief (the “Complaint”). In support of his motion, Fioretti states as follows:

1. Plaintiffs filed their Complaint on October 25, 2007, in the Circuit Court of Cook County of the State of Illinois, Chancery Division. Although Plaintiffs initially named as defendants the City of Chicago, the members of the City Council’s Committee on Zoning, and Alderman Fioretti, Plaintiffs voluntarily dismissed all defendants but Fioretti on November 21, 2007.

2. Plaintiffs’ claims against Alderman Fioretti stem from his introduction of an ordinance to the Chicago City Council to change the zoning for Plaintiffs’ property from a residential planned development to the DX-5 zoning classification and his request that the City Council’s Committee on Zoning defer its consideration of the amendatory ordinance. Plaintiffs claim that Alderman Fioretti’s actions violated their procedural and substantive due process rights under both

the United States and Illinois Constitutions. (See Comp., Counts I-IV.) They also seek a declaration that they have a vested right to the residential planned development (Count V) and a mandamus directing Alderman Fioretti to withdraw the amendatory zoning ordinance.

3. On November 29, 2007, Fioretti removed Plaintiffs' action to this Court pursuant to 28 U.S.C. §§ 1441 and 1446.

4. Pursuant to Fed. R. Civ. P. 81, Fioretti has five days -- until December 6, 2007 -- to answer or otherwise plead to Plaintiffs' claims.

5. Alderman Fioretti seeks an extension of time, to and including January 4, 2008, to respond to Plaintiffs' claims. At this time, Alderman Fioretti anticipates filing, pursuant to Fed. R. Civ. P. 12(b)(6), a motion to dismiss Plaintiffs' substantive and procedural due process claims in light of the Seventh Circuit's recognition in *Biblia Abierta v. Banks*, 129 F.3d 899, 902, 906 (7th Cir. 1997), that alderman enjoy absolute legislative immunity for introducing and voting on rezoning ordinances and for requesting deferrals. Alderman Fioretti also anticipates moving to dismiss the remaining claims.

6. In light of the nature of the claims asserted against Alderman Fioretti, additional time is necessary to prepare an appropriate response.

7. Because the Court has not yet set a trial date, no prejudice will result from the granting of Alderman Fioretti's request for additional time.

WHEREFORE, Alderman Fioretti respectfully requests an extension of time, to and including January 4, 2008, to answer or otherwise plead to Plaintiffs' Complaint, and for such other

relief as this Court deems just and appropriate.

Dated: December 3, 2007

Respectfully submitted,

MARA S. GEORGES
Corporation Counsel for the City of Chicago

By: /s/ William Macy Aguiar
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CERTIFICATE OF SERVICE

I, William Macy Aguiar, an attorney, hereby certify that on this, the 3rd day of December, 2007, I caused a copy of: (1) Notice of Motion; and (2) Defendant's Motion for an Extension of Time to Answer or Otherwise Plead to Plaintiffs' Complaint, to be served by electronic filing (ECF) and messenger delivery, on

Michael L. Shakman
Daniel M. Feeney
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/s/ William Macy Aguiar
William Macy Aguiar